

The House Committee on Judiciary Non-Civil offers the following substitute to HB 1389:

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 8 of Chapter 9 of Title 16 of the Official Code of Georgia Annotated,
2 relating to identity fraud, so as to provide for definitions; to provide that a consumer who has
3 been the victim of identity theft may place a security freeze on his or her credit report by
4 making a written request to a consumer credit reporting agency; to provide that such request
5 must be accompanied by a copy of a report that the consumer has filed with a law
6 enforcement agency or the Governor's Office of Consumer Affairs about the unlawful use
7 of his or her personal information by another person; to provide that a consumer credit
8 reporting agency must place a security freeze on the consumer's credit report no later than
9 five days after receiving a proper written request; to provide that if a security freeze is in
10 effect, the consumer credit reporting agency shall not change any official information in a
11 credit report without sending a written notification to the consumer; to limit the issuance of
12 credit cards under certain circumstances; to provide for related matters; to provide an
13 effective date; to repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **SECTION 1.**

16 Article 8 of Chapter 9 of Title 16 of the Official Code of Georgia Annotated, relating to
17 identity fraud, is amended by designating the existing provisions as Part 1 and adding a new
18 Part 2 to read as follows:

19 "Part 2

20 16-9-135.

21 (a) As used in this part, the term:

22 (1) 'Consumer' means a natural person.

1 (2) 'Consumer credit reporting agency' means any person, who for monetary fees, dues,
2 or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice
3 of assembling or evaluating consumer credit information or other information on
4 consumers for the purpose of furnishing credit reports to third parties.

5 (3) 'Credit report' means any written or other communication of any information by a
6 consumer reporting agency bearing on a consumer's credit worthiness, credit standing,
7 or credit capacity which is used or intended to be used or collected in whole or in part for
8 the purpose of serving as a factor in establishing the consumer's eligibility for credit or
9 insurance to be used primarily for personal, family, or household purposes or employment
10 consideration.

11 (4) 'Extension of credit' does not include an increase in an existing open-end credit plan,
12 as defined in Regulation Z of the Federal Reserve System (12 C.F.R. 226.2), or any
13 change to or review of an existing credit account.

14 (5) 'Person' means a natural person, corporation, trust, partnership, incorporated or
15 unincorporated association, or any other legal entity.

16 (6) 'Proper identification' means information generally deemed sufficient to identify a
17 person. Only when the consumer is unable to reasonably identify himself or herself with
18 proper identification may a consumer credit reporting agency require additional
19 information concerning the consumer's employment and personal or family history in
20 order to verify his or her identity.

21 (7) 'Security freeze' means a notice placed on a consumer file that prohibits a consumer
22 reporting agency from releasing a credit report relating to the extension of credit
23 involving that consumer file without the express authorization of the consumer.

24 (b) A credit card issuer who mails an offer or solicitation to apply for a credit card and
25 who receives a completed application in response to the offer or solicitation which lists an
26 address that is not substantially the same as the address on the offer or solicitation may not
27 issue a credit card based on that application until reasonable steps have been taken to verify
28 the applicant's change of address.

29 (c) Any person who uses a consumer credit report in connection with the approval of credit
30 based on the application for an extension of credit, and who has received notification of a
31 report filed with a law enforcement agency, the Governor's Office of Consumer Affairs,
32 or another consumer credit reporting agency that the applicant has been a victim of identity
33 fraud, as defined in Code Section 16-9-121, may not lend money or extend credit without
34 taking reasonable steps to verify the consumer's identity and confirm that the application
35 for an extension of credit is not the result of identity fraud.

(d) A consumer who has been the victim of identity fraud may place a security freeze on his or her credit report by making a request in writing by certified mail or overnight statutory delivery to a consumer credit reporting agency with a valid copy of a police report, investigative report, or complaint that the consumer has filed with a law enforcement agency or the Governor's Office of Consumer Affairs about unlawful use of his or her personal information by another person. A consumer credit reporting agency shall not charge a fee for placing, removing, or removing for a specific party or period of time a security freeze on a credit report. A security freeze shall prohibit, subject to the exceptions under this Code section, the consumer credit reporting agency from releasing the consumer's credit report or any information from it without the express authorization of the consumer. When a security freeze is in place, a consumer's credit report shall not be released to a third party without prior express authorization from the consumer. This subsection does not prevent a consumer credit reporting agency from:

- (1) Advising a third party that a security freeze is in effect with respect to the consumer's credit report; or
- (2) Disclosing the consumer's credit report or information from it for other than credit related purposes.

(e) A consumer credit reporting agency shall place a security freeze on a consumer's credit report no later than five days after receiving a written request from the consumer.

(f) If a third party requests a credit report in connection with an application for credit and the request is denied due to a security freeze, the third party may treat the application as incomplete.

(g) If the consumer wishes to allow his or her credit report to be accessed for a specific party or period of time while a freeze is in place, he or she shall contact the consumer credit reporting agency, request that the freeze be temporarily lifted, and provide the following:

- (1) Proper identification;
- (2) The unique personal identification number or password provided by the consumer credit reporting agency; and
- (3) The proper information regarding the third party or time period for which the report shall be available to users of the credit report.

(h) A consumer credit reporting agency may develop procedures involving the use of telephone, facsimile, the Internet, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report pursuant to subsection (g) of this Code section in an expedited manner.

(i) A consumer credit reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report pursuant to subsection (g) of this Code section shall comply with the request no later than three business days after receiving the request.

(j) A consumer credit reporting agency shall remove or temporarily lift a freeze placed on a consumer's credit report only in the following cases:

(1) Upon the consumer's request, pursuant to subsection (f) or (l) of this Code section;

or

(2) If the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer.

If a consumer credit reporting agency intends to remove a freeze upon a consumer's credit report pursuant to paragraph (2) of this subsection, the consumer credit reporting agency shall notify the consumer in writing prior to removing the freeze on the consumer's credit report.

(k) The consumer credit reporting agency shall send a written confirmation of the security freeze to the consumer within ten business days of receipt of the request. The written confirmation shall also provide the consumer with the following:

(1) A unique personal identification number or password, other than the consumer's social security number, to be used by the consumer when providing authorization for the release of his or her credit for a specific party or period of time;

(2) Notification to the consumer of his or her right to be excluded from credit pre-screening lists provided by a consumer reporting agency in connection with a credit or insurance transaction that is not initiated by the consumer;

(3) Information regarding the procedure for placing a fraud alert with consumer reporting agencies; and

(4) Information regarding the process for placing and temporarily lifting a security freeze to allow access to the consumer's credit report for a specific party or period of time while the freeze is in place.

(l) A security freeze shall remain in place until the consumer requests that the security freeze be removed. A consumer credit reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer, who provides the following:

(1) Proper identification; and

(2) The unique personal identification number or password provided by the consumer credit reporting agency.

(m) A consumer credit reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

(n) The provisions of subsections (d) through (m) of this Code section shall not apply to the use of a consumer credit report by any of the following:

(1) A person for the use of a credit report for purposes permitted under 15 U.S.C. Section 1681b(c);

(2) A person or entity, or a subsidiary, affiliate, or agent of that person or entity, or an assignee of a financial obligation owing by the consumer to that person or entity, or a prospective assignee of a financial obligation owing by the consumer to that person or entity in conjunction with the proposed purchase of the financial obligation, with which the consumer has or had prior to assignment an account or contract, including a demand deposit account, or to whom the consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or negotiable instrument. For purposes of this subsection, 'reviewing the account' includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements;

(3) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under subsection (g) of this Code section for purposes of facilitating the extension of credit or other permissible use;

(4) For other than credit related purposes consistent with the definition of credit report found in paragraph (3) of subsection (a) of this Code section;

(5) Any state or local agency, law enforcement agency, trial court, or private collection agency acting pursuant to a court order, warrant, or subpoena;

(6) A child support agency acting pursuant to Title IV-D of the Social Security Act;

(7) The relevant state agency or its agents or assigns acting to investigate Medicaid fraud;

(8) The Department of Revenue or its agents or assigns acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities;

(9) Any person or entity administering a credit file monitoring subscription service to which the consumer has subscribed; or

(10) Any person or entity for the purpose of providing a consumer with a copy of his or her credit report or credit score upon the consumer's request.

(o) If a security freeze is in place, a consumer credit reporting agency shall not change any of the following official information in a credit report without sending a written confirmation of the change to the consumer within 30 days of the change being posted to the consumer's file:

(1) Name;

(2) Date of birth;

1 (3) Social security number; or

2 (4) Address.

3 Written confirmation is not required for technical modifications of a consumer's official
4 information, including name and street abbreviations, complete spellings, or transposition
5 of numbers or letters. In the case of an address change, the written confirmation shall be
6 sent to both the new address and to the former address.

7 (p) The following entities are not required to place a security freeze on a credit report,
8 provided that any person that is not required to place a security freeze on a credit report
9 under paragraph (3) of this subsection shall be subject to any security freeze placed on a
10 credit report by another credit reporting agency from which it obtains information:

11 (1) A check services or fraud prevention services company, including issuers of reports
12 on incidents of fraud or potential fraud or authorizations for the purpose of approving or
13 processing negotiable instruments, electronic funds transfers, or similar methods of
14 payment;

15 (2) A deposit account information service company, which issues reports regarding
16 account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative
17 information regarding a consumer to inquiring banks or other financial institutions for use
18 only in reviewing a consumer request for a deposit account at the inquiring bank or
19 financial institution; or

20 (3) A consumer credit reporting agency that:

21 (A) Acts only to resell credit information by assembling and merging information
22 contained in a data base of one or more consumer credit reporting agencies; and

23 (B) Does not maintain a permanent data base of credit information from which new
24 credit reports are produced.

25
26 16-9-136.

27 (a) A violation of this part shall be punishable by imprisonment for not less than one nor
28 more than three years or a fine not to exceed \$10,000.00, or both. Any person who
29 commits a second or any subsequent offense shall be punished by imprisonment for not
30 less than two nor more than five years or a fine not to exceed \$25,000.00, or both.

31 (b) Any person found guilty of a violation of this part may be ordered by the court to make
32 restitution to any victim of such identity fraud.

33 (c) Each violation of this part shall constitute a separate offense.

34 (d) Upon a conviction of a violation of this part, the court may issue any order necessary
35 to correct a public record that contains false information resulting from the actions which
36 resulted in the conviction.

1 16-9-137.

2 (a) Any consumer victim who suffers injury or damages as a result of a violation of this
3 part may bring an action individually or as a representative of a class against the person or
4 persons engaged in such violations under the rules of civil procedure to seek equitable
5 injunctive relief and to recover general and punitive damages sustained as a consequence
6 thereof in any court having jurisdiction over the defendant; provided, however, that
7 punitive damages shall be awarded only in cases of intentional violation. A claim under this
8 part may also be asserted as a defense, setoff, cross-claim, counterclaim, or third-party
9 claim against such person.

10 (b) A court shall award three times actual damages for an intentional violation.

11 (c) If the court finds in any action that there has been a violation of this part, the consumer
12 victim injured by such violation shall, in addition to other relief provided for in this Code
13 section and irrespective of the amount in controversy, be awarded reasonable attorney's
14 fees and expenses of litigation incurred in connection with said action.

15 (d) It shall not be a defense in any action under this part that others were, are, or will be
16 engaged in like practices.

17 16-9-138.

18 This part is cumulative with other laws and is not exclusive. The rights or remedies
19 provided for in this part shall be in addition to any other procedures, rights, remedies, or
20 duties provided for in any other law or in decisions of the courts of this state dealing with
21 the same subject matter."

22 **SECTION 2.**

23 This Act shall become effective on January 1, 2007, and shall apply to transactions arising
24 on or after that date.

25 **SECTION 3.**

26 All laws and parts of laws in conflict with this Act are repealed.